



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Ching-Ching Tang,
Department of Education Student
Assistant Authority and Kathryn
Safran, Higher Education

Administrative Appeals

CSC Docket Nos. 2021-925 and 2021-
1704

ISSUED: JULY 26, 2021 (ABR)

Ching-Ching Tang, a former Director 2 Education¹ with the Department of Education, appeals the denial of her request for Supplemental Compensation on Retirement (SCOR), pursuant to *N.J.A.C.* 4A:6-3.1(b). The Higher Education Student Assistance Authority (HESAA) appeals the denial of Kathryn Safran’s, a former Director Planning and Research Higher Education,² request for SCOR, pursuant to *N.J.A.C.* 4A:6-3.1(b). Since these matters concern similar issues, they have been consolidated herein.

By way of background, in November 2020, the Department of Education submitted an application for SCOR on behalf of Ching-Ching Tang to this agency, indicating she retired, effective September 30, 2020. This request was denied as it was determined that Tang’s retirement from the Alternate Benefit Program (ABP) did not constitute the requisite “pension system” set forth in *N.J.S.A.* 11A:6-16 and *N.J.A.C.* 4A:6-3.1(b).

On February 3, 2021, the HESAA submitted an application for SCOR on behalf of Kathryn Safran to this agency, indicating she retired, effective December 31, 2020. This request was denied as it was determined that Safran’s retirement from the ABP did not constitute the requisite “retirement system” set forth in *N.J.S.A.* 11A:6-16

¹ It is noted that the title of Director 2 Education is an unclassified title.

² It is noted that the title of Director Planning and Research Higher Education is an unclassified title.

and *N.J.A.C.* 4A:6-3.1(b). Rather, the ABP appeared to be defined as a “retirement program.”

On appeal, Tang argues that her SCOR application should have been granted. She states that she commenced State service as a full-time employee in the in the Office of Student Assistance in the Department of Higher Education, predecessor to the HESAA, in December 1985 and was offered enrollment in the ABP at the time. Tang indicates that when she was transferred to the Department of Education in 1996, her ABP membership was grandfathered in. She further submits that her sick leave was counted and accumulated in the same way as others eligible for SCOR. Accordingly, she contends that she should have been deemed eligible for SCOR.

Additionally, the HESAA argues that it should be authorized to provide retired employees, including Safran, who were enrolled in the ABP with SCOR. In this regard, it avers that when these employees were hired, they were promised SCOR upon retirement and reasonably relied upon that promise in accepting and working in their positions. It further notes that while its classified employees are enrolled in the Public Employees’ Retirement System (PERS), its unclassified employees, including professional and administrative staff, are generally required to enroll in the ABP. The HESAA also advises that the unclassified professional and administrative staff who are enrolled in the ABP are granted sick leave under the same terms and conditions as the sick leave provided to its career service employees enrolled in PERS. Finally, the HESAA avers that the instant denials are contrary to long-standing precedent, as the Civil Service Commission and its predecessor agency, the Department of Personnel, had previously approved all SCOR payment requests for HESAA employees enrolled in the ABP since the HESAA’s inception in 1999. In support, it submits the names of nine of its employees enrolled in the ABP that it states were approved for SCOR between 2014 and 2018.

CONCLUSION

N.J.S.A. 11A:6-16 provides, in pertinent part. that:

State employees in the . . . unclassified services who have been granted sick leave under terms and conditions similar to career service employees, shall be entitled upon retirement from a State-administered retirement system to receive a lump sum payment as supplemental compensation for each full day of accumulated sick leave which is credited on the effective date of retirement.

See also N.J.A.C. 4A:6-3.1(a)2.

In the instant matter, a review of the record demonstrates that State employees enrolled in the ABP are eligible for SCOR if they otherwise meet the requirements set forth in *N.J.S.A.* 11A:6-16 or *N.J.S.A.* 11A:6-17, as well as *N.J.A.C.*

4A:6-3.1. The justification for denying the SCOR applications at issue was that SCOR was not a “retirement system.” However, a review of the New Jersey Statutes suggests that the ABP is indeed a retirement system. For example, *N.J.S.A.* 43:3C-9.6a, includes the ABP in a list of “retirement systems.” Specifically, *N.J.S.A.* 43:3C-9.6a provides:

Upon the termination of the Teachers’ Pension and Annuity Fund, the Public Employees’ Retirement System, the Judicial Retirement System, the Police and Firemen’s Retirement System, the State Police Retirement System, the Prison Officers’ Pension Fund, the Consolidated Police and Firemen’s Fund, *the Alternate Benefit Program*, or the Defined Contribution Retirement Program, or upon complete discontinuance of contributions to any of the retirement systems, *the rights of all members of such retirement system* to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable (emphasis added).

Further, it is noted that the former *N.J.A.C.* 4:2-26.1 defined “State-administered system” as “those pension programs administered by the State of New Jersey.” *See* 18 *N.J.R.* 2153. Accordingly, State career service employees enrolled in the ABP and State employees in job titles in the senior executive service without permanent career service status and in the unclassified service enrolled in the ABP who have been granted sick leave under the terms set forth in *N.J.S.A.* 11A:6-16 and *N.J.A.C.* 4A:6-3.1 should be deemed eligible for SCOR. Therefore, as Tang and Safran were State employees whose retirement from the ABP constituted a retirement from a “State-administered retirement system” and “pension system” for purposes of *N.J.S.A.* 11A:6-16 and *N.J.A.C.* 4A:6-3.1, respectively, the Division of Agency Services should process their applications.

ORDER

Therefore, it is ordered that the appeals of Ching-Ching Tang and Kathryn Safran be granted and that their SCOR applications be processed.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21ST DAY OF JULY, 2021

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